

**Overall Comments****Suggested comment from Debra Smiley for Bonneville Power Administration**

BPA appreciates the opportunity to comment on draft DOE Order 329.1A, Excepted Service Authorities for EJ and EK pay plans. BPA has no edits or comments to the draft Order as written.

**Suggested comment from Marilyn Jacobs for Headquarters EM**

This package represents the official, consolidated comments of N/A - **Comment package automatically submitted.**

**Included comments:**

**Andrea Cooper for Carlsbad Field Office**

No Comment

**Annette Erdman for Richland Operations Office**

No Comment

**Bobby Williams for Office of River Protection**

No Comment

**Suggested comment from Steve Duarte for Headquarters GC****Included comments:**

**SME Eric.Mulch@hq.doe.gov**

No Comment

**Suggested comment from Bill Schwartz for Headquarters HG**

This package represents the official, consolidated comments of **Poli A. Marmolejos, Director**

No Comment

**Suggested comment from Emily Jackson for Headquarters LM**

No Comment

**Suggested comment from Cathy Tullis for Headquarters NA**

This package represents the official, consolidated comments of **Cathy Tullis**

**Included comments:**

**SME anna.valdez@nnsa.doe.gov**

Suggest adding reference to the last page, "Attachment 1".

**Suggested comment from PK Niyogi for Headquarters NE**

No Comment

**Suggested comment from Rauland Sharp for Headquarters HC**

This package represents the official, consolidated comments of N/A - **Comment package automatically submitted.**

No Comment

**Suggested comment from John Wall for Headquarters CF**

This package represents the official, consolidated comments of N/A - **Comment package automatically submitted.**

No Comment

**1-3. PURPOSE; CANCELLATION; APPLICABILITY****Suggested comment from Cathy Tullis for Headquarters NA****Included comments:**

**SME anna.valdez@nnsa.doe.gov**

"authority" should be changed to "authorities" as two different authorities are listed.

**Response:**

*Accept*

**Suggested comment from Cathy Tullis for Headquarters NA****Included comments:**

**SME anna.valdez@nnsa.doe.gov**

Remove the second sentence; which refers to CRDs. Because this order is not applicable to contractors, the sentence is inappropriate.

**Response:**

*Reject*

Retain current language as advised by the Office of General Counsel, Assistant General Counsel for Law.

**Major comment from Cathy Tullis for Headquarters NA**

**Included comments:**

**SME anna.valdez@nnsa.doe.gov**

Please add the following statement under 3.a.:

In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 USC sections 2406 and 2511 and to ensure consistency through the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this directive for activities under the Director's cognizance, as deemed appropriate.

**Response:**

*Accept*

**Suggested comment from Cathy Tullis for Headquarters NA**

**Included comments:**

**Henry Van Dyke for NA-General Counsel**

**Public Law (P.L.) 106-65 to**

**Response:**

*Accept*

**SME anna.valdez@nnsa.doe.gov**

The word "assure" should be changed to "ensure". Ensure is to do what is necessary for compliance. Assure is to promise or say with confidence.

**4. REQUIREMENTS**

**Suggested comment from Steve Duarte for Headquarters GC**

**Included comments:**

**SME kate.gehringer@hq.doe.gov**

delete "is" in the second line of a.(1) and replace with "may be" so it reads: "section 7231(d), may be used to enhance...."

**Response:**

*Accept*

**Suggested comment from Cathy Tullis for Headquarters NA**

**Included comments:**

**SME anna.valdez@nnsa.doe.gov**

Recommend deleting strikethrough since it is duplicate to section 1. a.

The EJ authority as referenced in ~~Section 621(d) of the DOE Organization Act (42 United States Code (U.S.C.), section 7231(d))~~, is used to enhance the Department's recruitment and retention of highly qualified scientific, engineering, and professional administrative personnel.

**Response:**

*Accept*

**Suggested comment from Steve Duarte for Headquarters GC**

**Included comments:**

**SME kate.gehringer@hq.doe.gov**

delete "is" the secon line of (2) and replace with "may be" so it reads "and renewals, may be used to enhance..."

**Response:**

*Accept*

**Suggested comment from Cathy Tullis for Headquarters NA**

**Included comments:**

**SME anna.valdez@nnsa.doe.gov**

Recommend deleting strikethrough since it is duplicate to section 1.b.

The EK authority, ~~as referenced in Section 3161(a) of the National Defense Authorization Act for Fiscal Year 1995 (Pub.L. 103-337, October 5, 1994) and renewals~~, is used to enhance the Department's recruitment and retention of highly qualified scientific, engineering, and technical personnel whose duties will relate to safety at defense nuclear facilities of the Department. Appointments made under this authority may be made without regard to the civil service laws and are excepted from the provisions of Title V, United States Code.

**Response:**

*Accept*

**SME anna.valdez@nnsa.doe.gov**

Change: "...a freeze on hiring is implemented if the ~~time period~~ authority expires prior to extension".

**Response:**

*Accept*

**Delegate Emily Mishoe for Headquarters NA**

Comment by Pat Rhoads (NA-00.1):

The syntax does not follow. The second paragraph states that the appointments "may" be time appointments. The word "may" should be changed to "are."

**Major comment from Steve Duarte for Headquarters GC**

**Included comments:**

**SME Jocelyn.Richards@hq.doe.gov**

Recommend using language consistent with Title VII/EEO protected categories. "The authorities shall be used in adherence to fair hiring practices without regard to non-merit factors such as race, color, religion, sex, age, national origin, disability, or genetic information."

**Response:**

*Accept*

**Suggested comment from Cathy Tullis for Headquarters NA**

**Included comments:**

**SME anna.valdez@nnsa.doe.gov**

Change to "The authorities shall be used in adherence to fair hiring practices without regard to non-merit factors such as ace, color, religion, sex (including gender identity or pregnancy), national origin, disability, political affiliation, marital status, membership in an employee organization, age sexual orientation, or other non-merit factors, and with proper regard for privacy and constitutional rights.

**Response:**

*Accept with Modifications*

Accepted lanaguage recommended by the Office of General Counsel, Assistant General Counsel for General Law (GC-56).

**Suggested comment from Jennifer Kelley for Headquarters SC**

Paragraph 4.a.(3): Recommend either listing out all of the non-merit factors or changing "such as" to "e.g."

**Response:**

*Accept with Modifications*

Accepted lanaguage recommended by the Office of General Counsel, Assistant General Counsel for General Law (GC-56).

**Major comment from Steve Duarte for Headquarters GC**

**Included comments:**

**SME kate.gehringer@hq.doe.gov**

delete "must" in the first line of (4) and replace with "may only" to read: "These authorities may be used for:"

The use of "must" implies that this is the only way to accomplish those objectives.

**Response:**

*Accept*

**Suggested comment from Steve Duarte for Headquarters GC**

**Included comments:**

**SME Jocelyn.Richards@hq.doe.gov**  
Change "scare" to "scarce".

**Response:**  
*Accept*

**Suggested comment from Cathy Tullis for Headquarters NA**

**Included comments:**

**Henry Van Dyke for NA-General Counsel**

**Retaining employees in mission-critical positions or occupations based upon ~~scare~~ high demand or unique combination of skills and experience required to help the Department meet its mission:**

**Response:**  
*Accept*

**SME anna.valdez@nnsa.doe.gov**

(4)(a)2(b) Confusing as written (scare or scarce demand?). Also need to remove the colon. Change to: Retaining employees in mission-critical positions or occupations based upon high-demand or unique combination of skills and experience required to help the Department meet its mission.

**Response:**  
*Accept*

**Suggested comment from Sharon Edge-Harley for Headquarters IEA (Independent Enterprise Assessment)**

SME [Kathy.McCarty@hq.doe.gov](#) wrote:

Section 4.a.(4)(b): The sentence does not make sense as written and the word "scare" should read "scarce.". Consider re-wording similar to "Retaining employees in mission-critical positions or occupations based on scarce availability of qualified candidates or a unique combination of skills and experience required to help the Department meet its mission."

**Response:**  
*Accept*

**Major comment from Steve Duarte for Headquarters GC**

**Included comments:**

**SME kate.gehringer@hq.doe.gov**  
delete "are not to be" and replace with "can not be" to read: "These authorities can not be used to:"

**Response:**  
*Accept*

**Suggested comment from Cathy Tullis for Headquarters NA**

**Included comments:**

**SME anna.valdez@nnsa.doe.gov**

(5)(a) Change to: Make political appointments or appointments to positions properly classified in the Senior Executive Service (SES). Political appointments are made through established Schedule C, non-career SES appointment and Presidential authorities and processes.

Add: (5)(b): Non-competitively convert current or former political, SES, or Schedule C appointees to excepted service appointments.

Change (5)(b) to (5)(c) and change wording: Promote current DOE/NNSA GS employees solely as a means of providing greater compensation.

Change (5)(c) to (5)(d)

**Response:**  
*Reject*

Decision: Retain current language.

**Major comment from Steve Duarte for Headquarters GC**

**Included comments:****SME kate.gehringer@hq.doe.gov**

in c.(3) delete "Nuclear Engineers" and replace with "the specific position" to read "which meet teh series definition for the specific position at a level comparable to GS-15"

**Response:***Accept***Suggested comment from Cathy Tullis for Headquarters NA****Included comments:****SME anna.valdez@nnsa.doe.gov**

c.(2) and c.(3) last sentence on each paragraph add ..."comparable to GS-14 or GS-15."

Rationale: EK-IV and EJ-IV include both GS-14 and GS-15 level work. Positions classified at either GS-14 or GS-15 would be included in EK-IV or EJ-IV. It could be confusing if the "GS-14" is not included in the examples.

**Response:***Accept***SME anna.valdez@nnsa.doe.gov**

c.(1): The word 'position' should be plural.

c.(2) Correctly position parens and change Accointing to Accountant: Positions under the EJ authority shall be coded with the prefix "EJ" followed by the appropriate occupational series and corresponding difficulty level (e.g., EJ-510-IV for positions which meet the series definition for Accounting at a level comparable to GS-15).

c. (3) Correctly position parens and change Engineers to Engineer: Positions under the EK authority shall be coded with the prefix "EK" followed by the appropriate occupational series and corresponding difficulty level (e.g., EK-840-IV for positions which meet the series definition for Nuclear Engineer at a level comparable to GS-15).

**Suggested comment from Cathy Tullis for Headquarters NA****Included comments:****Delegate Emily Mishoe for Headquarters NA**

Comment by Pat Rhoad (NA-00.1):

4.c.4.a: The words say the appointments "may" be equivalent to GS appointments. Are they equivalent or not? If the "may" actually is truly meant, delete the section. The section is under "Requirements." May's do not impart any requirements. (Pat Rhoads, 6-7859)

**Response:***Accept***Suggested comment from Cathy Tullis for Headquarters NA****Included comments:****SME anna.valdez@nnsa.doe.gov**

The definition of "grandfathered" needs to be included somewhere in the document to include the employment time frame which covers these grandfathered employees to help distinguish which EK and/or EJ employees are considered to be grandfathered.

**Response:***Accept***Major comment from Sara Frey for Western Area Power Administration**

-->(d)

**Pay Band IV: The level of duties may be equivalent to the grade levels GS-14 through GS-15 of the General Schedule.**

-->1

Pay Range GS-14, step 1 through 103 % of GS-15,  
step 10.

-->2

**Grandfathered** 14/1 to 136% of 15, step 1.

**Change to "GS-14, step 1 through 136% of GS-15, step 1.**

→(e)

**Pay Band V:** The level of duties is above the GS-15 grade level of the General Schedule.

Pay  
Range EX-V through EX-III.

**Response:**

*Accept*

**Suggested comment from Cathy Tullis for Headquarters NA**

**Included comments:**

**SME anna.valdez@nnsa.doe.gov**

Add: "Time in band does not apply to Excepted Service."

**Response:**

*Accept*

**SME anna.valdez@nnsa.doe.gov**

"...classification requirements" should be "qualification requirements"

**Suggested comment from Cathy Tullis for Headquarters NA**

**Included comments:**

**SME anna.valdez@nnsa.doe.gov**

Please provide clarification if this means DOE or NNSA Headquarters GC.

**Response:**

*Accept*

**Henry Van Dyke for NA-General Counsel**

## **or for NNSA coordination with Headquarters NNSA's GC**

**SME anna.valdez@nnsa.doe.gov**

The use of the words "competitive" and non-competitive" are inappropriate and may be confusing, because all excepted service positions are excepted from the competitive service. Better wording would be "Positions under these authorities may be filled from sources within and outside the Department and federal government with or without competition."

Throughout the document, the words "competitive" and non-competitive" should be changed to "with competition" and "without competition".

**Response:**

*Reject*

Decision: Retain current language.

**Suggested comment from Cathy Tullis for Headquarters NA**

**Included comments:**

**SME anna.valdez@nnsa.doe.gov**

**Change "Non-Competitive Procedures" to "Selection without Competition"**

**In federal personnel terms, "Non-competitive" indicates the action is not related to a competitive service appointment. The intent of this paragraph is to outline those situations in which a selection may be made without announcing the position and having applicants compete against one another. The intent was not to indicate that the actions were not related to competitive service appointments.**

Throughout the document, the words "competitive" and non-competitive" should be changed to "with competition" and "without competition".

**Response:**

*Reject*

Decision: Retain current language.

**Suggested comment from Marilyn Jacobs for Headquarters EM**

**Included comments:**

**SME Susan.Megahee@srs.gov**

In the 2012 Desk Reference, the cut-off scores for category rating is stated. Will these cut-off scores remain unchanged? If so, recommend it be added to order.

**Response:**

*Reject*

The scoring for Category Rating will remain in the Desk Reference (which will be updated). The scores are in Hiring Manager and will remain unchanged.

**Suggested comment from Cathy Tullis for Headquarters NA**

**Included comments:**

**SME anna.valdez@nnsa.doe.gov**

(2)(a)1 Change to: "SMRB approval for the position must be obtained prior to recruitment."

(2)(a) 2 para 1 Because Category Rating can only be used for competitive positions, change to: " Veteran's preference applies. DOE applies Category-like Rating procedures to rate and rank applicants, when using a ranked method."

(2)(a) 2 para 2 Because it is already stated that Title 5 does not apply, change to: "Acceptance and evaluation of applications for the selection and appointment of candidates for positions covered by these authorities shall be in accordance with policies and procedures mirrored in 5 CFR, Part 302, and 5 U.S.C. 2108."

Also, there is no mention of using an unranked list when filling with competition. Can the agency use an unranked list of candidates who meet the minumum qualification requirements, similar to 5 CFR 302.302?

**SME anna.valdez@nnsa.doe.gov**

Change "Competitive Procedures" to "Selection With Competition".

**Suggested comment from Pamela Gentel for Headquarters FE**

**Included comments:**

**SME alan.perry@hq.doe.gov**

The section does not address internal recruitment - can the area of consideration be limited to DOE?

**Response:**

*Accept*

The response to your question is "yes". The information is located under e.(b)2.

**Suggested comment from Cathy Tullis for Headquarters NA**

**Included comments:**

**SME anna.valdez@nnsa.doe.gov**

(b)2 Need to describe the referral procedures. Will the procedures be similar to 5 CFR 302 or similar to agency merit promotion procedures?

**Suggested comment from Cathy Tullis for Headquarters NA**

**Included comments:**

**SME anna.valdez@nnsa.doe.gov**

(3)(a) The provisions governing details for comparable GS positions are in 5 CFR 300.301, which allow details from excepted positions to other excepted position and details from Schedules A and B, and VRA excepted service positions to competitive service positions. All other details of excepted service positions to a position in the competitive service may be made only with the prior approval of the Office of Personnel Management or under a delegated agreement between the agency and OPM. Do we want to make this clear?

**Suggested comment from Cecelia Kenney for Headquarters AU (formerly HS)**

How will this be implemented? Will a new pool be established for EK and EJ like SL and SES positions or will it still be included in the GS pool?

**Suggested comment from Cathy Tullis for Headquarters NA****Included comments:****Delegate Emily Mishoe for Headquarters NA**

Comment by Pat Rhoads, NA-00.1:

4.f.1.d: The requirement should be for *at least* two briefings on performance during the year, not just two. (Pat Rhoads, 6-7859)**Suggested comment from Pamela Gentel for Headquarters FE****Included comments:****SME alan.perry@hq.doe.gov**

Suggest clarifying (c). What does this mean? When is the employee eligible for a performance-based pay adjustment?

**Response:***Accept*

Revised language. The employee is eligible only at the end of the performance appraisal cycle.

**Suggested comment from Steve Duarte for Headquarters GC****Included comments:****SME kate.gehringer@hq.doe.gov**

In (2)(a) insert "(6%)" after spelled out six percent to be consistent with g.(2)(B)(5)(b).

**Response:***Accept***Suggested comment from Cathy Tullis for Headquarters NA****Included comments:****SME anna.valdez@nnsa.doe.gov**

Need to add information on Quality Increases (QI) in order to establish the policy for granting these under these authorities.

**Response:***Reject*

EJ and EK employees are ineliigible for QIs. Refer to Policy Guidance Memorandum #38 Exception to Policy Regarding Quality Step Increases.

**Suggested comment from Cecelia Kenney for Headquarters AU (formerly HS)**

Does this mean that pay adjustments can only be made at the end of a performance cycle or can they be made during the progress review?

**Response:***Accept*

Correct. The employee is eligible only at the end of the performance appraisal cycle. language has bee revised to clarify.

**Suggested comment from Sara Frey for Western Area Power Administration****-->(3)**

Performance-Based Awards

**-->(a)**Based on their annual performance achievements, EJ or EK employees may receive lump sum cash awards (**"bonuses"**).**-->(b)**

Time Off Awards comparable to other pay systems in recognition of annual performance may also be granted.

**-->(c)**

Eligibility is applicable during the performance cycle only if based upon the annual performance.

**Response:**  
*Accept*

**Suggested comment from Sharon Edge-Harley for Headquarters IEA (Independent Enterprise Assessment)**

SME [Kathy.McCarty@hq.doe.gov](mailto:Kathy.McCarty@hq.doe.gov) wrote:

Section 4.f.(4)(d): The requirement here to submit non-monetary awards to the OER for SMRB approval appears to conflict with item (c) above, which does not require such approval for Time Off Awards less than 20 hours. Consider re-wording to "Monetary and non-monetary awards over the thresholds in (c) must be submitted to OER...."

**Response:**  
*Accept*

**Suggested comment from Cathy Tullis for Headquarters NA**

**Included comments:**

SME [anna.valdez@nnsa.doe.gov](mailto:anna.valdez@nnsa.doe.gov)

Add to g.1.

(see Attachment 1 for pay setting examples)

**Response:**  
*Accept*

SME [anna.valdez@nnsa.doe.gov](mailto:anna.valdez@nnsa.doe.gov)

g.(1)(b)7 May also compare other excepted service positions in agency (i.e., NNSA's EN positions). Change to: Organizational equity or pay considerations (comparable competitive or excepted service positions)

**Response:**  
*Accept*

**Major comment from Steve Duarte for Headquarters GC**

**Included comments:**

SME [Jocelyn.Richards@hq.doe.gov](mailto:Jocelyn.Richards@hq.doe.gov)

GC is still trying to determine whether the statutory authority provides for pay ranges up to EX-III, as noted in a conversation with Susan Beard and Erin Moore in reference to correspondence from OPM.

**Response:**  
*Accept*

No action necessary by the Office of Executive Resources.

**Suggested comment from Steve Duarte for Headquarters GC**

**Included comments:**

SME [kate.gehringer@hq.doe.gov](mailto:kate.gehringer@hq.doe.gov)

double check the correct step for the upper bound of the pay band IV (grandfathered) is GS-15/1.

**Major comment from Sara Frey for Western Area Power Administration**

Are these pay ranges fro the RUS pay scale are they comparabel to the pay ranges for that locality?

**Response:**  
*Reject*

The salary is equivalent to base pay. The locality is included based upon the official duty station.

**Major comment from Steve Duarte for Headquarters GC**

**Included comments:**

SME [Jocelyn.Richards@hq.doe.gov](mailto:Jocelyn.Richards@hq.doe.gov)

Replace text in (3) Locality Pay Increases with the following:

"OPM locality rates will be applied to the EJ and EK basic pay bands such that the total compensation will not exceed that of Executive Level III."

**Response:**

*Accept*

**Suggested comment from Cathy Tullis for Headquarters NA**

**Included comments:**

**SME anna.valdez@nnsa.doe.gov**

Change to Locality Pay Adjustments

**Response:**

*Accept*

**Suggested comment from Steve Duarte for Headquarters GC**

**Included comments:**

**SME kate.gehringer@hq.doe.gov**

Current order provides that aggregate compensation of basic play plus performance based pay adjustment, incentive, award, etc. per calendar year may not exceed EX-1. Should this order have a similar cap on aggregate compensation?

**Response:**

*Reject*

Information addressed under g.(2) a.

**Suggested comment from Cathy Tullis for Headquarters NA**

**Included comments:**

**SME anna.valdez@nnsa.doe.gov**

Clarify the definition of "promotion." It is not clear whether the term "...or permanent assignment to another position of greater complexity" also means to a higher pay band. Also why does the definition of promotion focus on "accretion of duties" rather than on competing for a higher level position?

If an appointment allows for employee to be hired at less than FPL, this would be another definition of promotion. Should this be revised to discuss career ladder promotions under these scenarios?

Does "up to six percent (6%)" mean that a promotion pay increase could be less than 6%? As an example, positions in the GS generally receive 6-8% for a promotion.

**Response:**

*Accept with Modifications*

Revised language.

**Suggested comment from Cecelia Kenney for Headquarters AU (formerly HS)**

Are these no longer requiring SMRB approval as it is not clear in the current draft. If they do require SMRB approval, suggest adding (d) SMRB approval is required.

**Response:**

*Accept*

**Suggested comment from Cathy Tullis for Headquarters NA**

**Included comments:**

**SME anna.valdez@nnsa.doe.gov**

(6) (a) Change to: A reassignment to a position in an equivalent pay band with substantially greater responsibility may result in an increase up to six percent (6%), not to exceed the top of the pay band.

Provide additional examples of "substantially greater responsibility" other than nonsupervisory to supervisory.

**Response:**

*Accept*

Revised language.

Declined request for additional examples. They will be provided in the updated EJ and EK Desk Reference.

**SME anna.valdez@nnsa.doe.gov**

Two thoughts here:

For (a), is the 6% increase permitted without competition?

For (b), Does the DOE Guidance Memorandum #28 Requirements for Non-Competitive Reassignment into Supervisory Managerial positions, apply to the Excepted Service authorities?

(a) A reassignment to a position of substantially greater responsibility may result in an increase up to six percent (6%) not to exceed the top of the pay band.

(b) This will generally apply to an employee being reassigned from a nonsupervisory position to a supervisory position.

**Response:**

*Accept with Modifications*

In response to your questions (a) and (b) , yes. Language has been clarified for (b) to indicate competitive action as applicable.

#### **Suggested comment from Cecelia Kenney for Headquarters AU (formerly HS)**

If this requires SMRB approval, suggest adding (c) SMRB approval required.

**Response:**

*Accept*

#### **Suggested comment from Cathy Tullis for Headquarters NA**

##### **Included comments:**

**SME anna.valdez@nnsa.doe.gov**

Please provide examples. Would a GS-14 moving into an EK-IV or EJ-IV (GS-14/15)be considered movement into a position with "greater responsibility." Would a GS-15 moving into an EK-IV or EJ-IV (GS-14/15) be considered movement into a positon with "greater responsibility?"

**Response:**

*Accept*

In response to your question, yes. Language has been Revised to clarify.

#### **Suggested comment from Steve Duarte for Headquarters GC**

##### **Included comments:**

**SME kate.gehringer@hq.doe.gov**

rewrite text in (9) to read as follows:

Employees whose official worksite is changed to a new duty location upon a pay setting action (e.g. promotion, reassignment, etc.), must be converted to the applicable pay schedule, the rate of base pay, and appropriate locality rate set for the new official worksite prior to processing the new pay-setting action.

**Response:**

*Accept*

#### **Suggested comment from Sara Frey for Western Area Power Administration**

In regards to section (11)(b)

Does this mean they will earn leave based on years of service? If so, that should be clarified clearly. Someone at a GS-9 level could be earning 4, 6, or 8 hours of annual leave depending on years of service.

**Response:**

*Accept*

#### **Suggested comment from Cathy Tullis for Headquarters NA**

##### **Included comments:**

**SME anna.valdez@nnsa.doe.gov**

Employees not on a Flexible Work Schedule may also earn compensatory time in lieu of overtime. The employee's entitlement to overtime vs. compensatory time is also determined on their FLSA status. This needs to be incorporated into this guidance. Title 5 can be given comp time in lieu of overtime, and an FLSA exempt employee can request comp time in lieu of overtime. This guidance should also address regularly scheduled overtime and comp time for travel.

**Response:**

*Accept*

Revised language.

#### **Suggested comment from Marilyn Jacobs for Headquarters EM**

**Included comments:****SME Susan.Megahee@srs.gov**

Section h.(1)(b)2. What if an employee is terminated due to performance issues? Recommend we add performance issues to "...terminated for reasons other than misconduct, neglect of duty, or malfeasance."

**Response:***Accept***Major comment from Pamela Gentel for Headquarters FE****Included comments:****SME alan.perry@hq.doe.gov**

(b) is not clear, at least to me. #1 seems to be missing something at the beginning.

Is it - "Prior to the appointment to the time-limited EJ or EK appointment, the employee served in a non-time limited appointment in the excepted service; on a career or career-conditional appointment in the competitive service; on a career SES appointment; or an appointment of equivalent tenure; and ..."

**Response:***Accept*

Revised language.

**Suggested comment from Steve Duarte for Headquarters GC****Included comments:****SME Jocelyn.Richards@hq.doe.gov**

Section (b) seems awkwardly worded and it isn't clear whether the phrase "who meet the following conditions" applies to subsections (1) and (2). Also, the word "career" appears twice in a row in subsection (1).

**Response:***Accept*

Revised language.

**Suggested comment from Cathy Tullis for Headquarters NA****Included comments:****SME anna.valdez@nnsa.doe.gov**

Change "Reinstatement Eligibility" to "Fallback Rights". The title Reinstatement Eligibility is misleading since it appears that it is referring to reinstatement into EK or EJ and of course there is no such thing as "reinstatement" into the Excepted Service because one does not need status for an excepted service position. This paragraph is really addressing "falling back" to a previous appointment in a different pay system.

h.(1)(b) Additional parameters should be reviewed and implications dealt with, such as whether an employee is entitled to reassignment within the same duty location as the EJ or EK position, or to duty location from which they came, or to anywhere within DOE? Is relocation paid for? Is it to the same series of their EK/EJ position, or their position they came from, or both, or whatever they qualify for?

This guidance needs to require that a letter to that effect be provided to employee and signed acknowledging receipt, prior to the effective date of the action. If appointing someone from the competitive obtain a statement from the employee that the employee is leaving the competitive service voluntarily to accept appointment in the excepted service.'

**Response:***Accept with Modifications*

Revised language to include Fallback Rights retained Reinstatement Eligibility.

A letter and applicable guidance is currently provided to the employee prior to effecting the action. Sample letters are currently included in the EJ and EK Desk Reference (will be updated).

**Suggested comment from Cathy Tullis for Headquarters NA****Included comments:****SME anna.valdez@nnsa.doe.gov**

(3)(a) Because other excepted service appointments do confer career or career conditional status, Change to Appointment to an EJ or EK position does not confer career-conditional or career tenure status.

(3)(b) It appears this is trying to address the fact that appointment to an EJ/EK position does not confer competitive status. An employee does not necessarily have to 'compete' in order to be placed back to another federal position. There are a myriad of other appointing authorities, VRA, 30% disabled veteran, for

which they could be hired to a competitive service position without 'competition'. Change to An employee must compete with other applicants in open competition to meet requirements for a competitive service federal position, unless they meet the requirements for reinstatement or other non-competitive authorities.

Add: (c) Time in the EK or EJ excepted service appointment may be creditable toward competitive service tenure if the Ek or EJ service intervenes between two periods of creditable service without a single break of 30 calendar days or more." 5 CFR 315.201(b)(2)(iv)

#### Suggested comment from Steve Duarte for Headquarters GC

##### Included comments:

**SME Jocelyn.Richards@hq.doe.gov**  
In (4)(a), Pay Band V is referred to as Pay Band 5.

**Response:**  
*Accept*

#### Major comment from Cathy Tullis for Headquarters NA

##### Included comments:

**Bo Kim for NA-00**

Comment by Pat Rhoads, NA-00.1

4.h.4.a: The 25% supervisory standard for V's ought be amended to allow for an EN V to act as the supervisor, including up to 100% of the position's time, if the position that the V holds is specifically assigned as a senior technical position that supervises a division whose principal responsibilities are in that technical area. For example, a senior nuclear safety V ought and arguably should be the supervisor of a nuclear safety group. As a matter of clarity, add a provision that, on an acting basis, an Level V may act in a supervisor role that requires as much as 100% of his time for supervision; however, this position may not be the Level V's positon of record. (Pat Rhoads, 6-7859)

4.h.4.b: Eliminate the restriction that Level V's cannot report to IV's or GS employees. There are many situations where reporting to a lower paid individual is entirely justified. A senior technical V may be advisor or may be working a narrow technical area. In these entirely appropriate roles for a V, the person whom he reports to may have far broader or managerial roles that do not require the depth of technical expertise for the narrow area for which the V is the expert. These broader managerial areas can, often are, and frequently staffed by Level IV or GS employees. (Pat Rhoads, 6-7859)

**Response:**  
*Reject*

Through interpretation of the laws for EJ and EK by the Office of Personnel Management (OPM) and DOE's Office of General Counsel Pay Band Vs are prohibited from full supervisory duties. The thought is the Pay Band V's duties are equivalent to the SES; however, it does not meet the full definition and to align to the pay plans Senior Level (SL) and Scientific and Professional (ST) positions who can supervise no more than 25%. A Pay Band V should not be reporting to a lower graded employee and again the premise is based upon equivalency to SES/SL/ST and it is not considered an appropriate supervisory relationship.

This directive applies to authorities EJ and EK only and EN questions should be directed to your NNSA servicing HR Specialist for guidance.

#### Suggested comment from Marilyn Jacobs for Headquarters EM

##### Included comments:

**SME Susan.Mcgahee@srs.gov**  
Section (5)(a) states, "...unless the employee has already completed a probationary period under a career or career-conditional appointment." Previously, employees had to complete a new probationary period even if converted from an appointment with career status. Recommend this remain the same as previously stated.

**Response:**  
*Reject*

Decision: Retain current guidance.

#### Suggested comment from Cathy Tullis for Headquarters NA

##### Included comments:

**SME anna.valdez@nnsa.doe.gov**

(5)(a) Will an employee who has served a trial period under a different excepted service authority be required to serve a new trial period? If not, should change to: A trial period of one year for the purpose of assessing the ability of an individual to adequately perform in his or her assigned position will be established for appointments under these authorities unless the employee has already completed a probationary period under a career or career-conditional appointment or a trial period under a different excepted service authority.

(5)(b) Employees in the competitive service do not serve a trial period. Change to: Employees separated within their trial periods will be provided the same rights as competitive service employees who are involuntarily separated during the probationary period.

(5)(b) Add to the end of the sentence: "..." unless they have already served a supervisory probationary period in a federal position." Please add what happens if employee does not meet the supervisory probationary requirements (does not complete the supervisory probationary period), are they entitled to be placed back

to their old position from which they came or a similar one?

#### Suggested comment from Cathy Tullis for Headquarters NA

##### Included comments:

SME [anna.valdez@nnsa.doe.gov](mailto:anna.valdez@nnsa.doe.gov)

Non-permanent employees are now eligible in health benefits if they are expected to work 130 hours per month or more for at least 90 days.

Change to: Employees appointed under this authority are entitled to the same basic benefits (e.g., health benefits, life insurance, retirement, and leave accrual) as applicable to other employees of the Department (based on eligibility requirements).

##### Response:

*Accept*

#### Major comment from Steve Duarte for Headquarters GC

##### Included comments:

SME [kate.gehringer@hq.doe.gov](mailto:kate.gehringer@hq.doe.gov)

Replace (7) with the following:

- (7) Financial Disclosure Report

Employees under these authorities may be required to complete a confidential or public financial disclosure statement and receive conflict of interest clearance from the Office of General Counsel (GC) prior to initial appointment. Confidential financial disclosure reports are due annually on February 15. Employees required to complete the public financial disclosure report must do so annually on May 15 of every year, and upon termination of a position that requires an employee to file. Public financial disclosure report filers also have to file periodic transaction reports as necessary.

##### Response:

*Accept*

#### Suggested comment from Cathy Tullis for Headquarters NA

##### Included comments:

Delegate Emily Mishoe for Headquarters NA

Comment by Pat Rhoads, NA-00.1:

4.h.7: The word in this provision refers to "may," which imparts no requirement. Firm up whatever the requirement is supposed to be and capture it as a requirement. As an editorial point, do not include the May date for reporting; instead, refer to the date to be announced by GC on an annual basis, which might differ from the specific May date. (Pat Rhoads, 6-7859)

#### Major comment from Steve Duarte for Headquarters GC

##### Included comments:

SME [kate.gehringer@hq.doe.gov](mailto:kate.gehringer@hq.doe.gov)

replace (a) with the following:

•(a) All Federal employees are subject to the post-employment restrictions set forth in 18 U.S.C. Part 207. 18 U.S.C. Part 207 is the primary source of post-employment restrictions for Federal employees. In general, this statute prohibits a former employee from knowingly making, with the intent to influence, any communication to or appearance before an officer or employee of the United States on behalf of any other person (except the United States) in connection with a particular matter involving a specific party in which the employee was personally and substantially involved or that was pending under the employee's official responsibility, and in which the United States is a party or has a direct and substantial interest.

##### Response:

*Accept*

#### Suggested comment from Steve Duarte for Headquarters GC

##### Included comments:

SME [kate.gehringer@hq.doe.gov](mailto:kate.gehringer@hq.doe.gov)

in (b) insert a period between schedule and for and capitalize "for" to read as follows: "...Schedule. For a period of one year after"

#### Suggested comment from Sharon Edge-Harley for Headquarters IEA (Independent Enterprise Assessment)

SME [Kathy.McCarty@hq.doe.gov](mailto:Kathy.McCarty@hq.doe.gov) wrote:

Section 4.h.(8)(b): The second sentence is a run-on. It appears there should be a period after the word "position," followed by a new sentence that starts with something similar to "Such an individual...."

**Response:***Reject*

Retain: Language provided by the Office of General Counsel, Assistant General Counsel for General Law.

**Suggested comment from Sharon Edge-Harley for Headquarters IEA (Independent Enterprise Assessment)**

SME [Kathy.McCarty@hq.doe.gov](mailto:Kathy.McCarty@hq.doe.gov) wrote:

Section 4.h.(9)(a): This item is a duplicate of 4.h.(5)(b). Consider whether the item needs to be repeated.

**Response:***Reject*

Decision: Retain language in both sections of the directive.

**Suggested comment from Cathy Tullis for Headquarters NA****Included comments:**

SME [anna.valdez@nnsa.doe.gov](mailto:anna.valdez@nnsa.doe.gov)

(10)(b) Recommend adding, as defined in 5 CFR....., and give the appropriate references.

**Response:***Reject*

Retain current language. Received concurrence from the Office of General Counsel.

**5. RESPONSIBILITIES****Major comment from Steve Duarte for Headquarters GC****Included comments:**

SME [kate.gehringer@hq.doe.gov](mailto:kate.gehringer@hq.doe.gov)  
in (5) should read "Intergovernmental Personnel Act assignment details"

**Response:**  
*Accept*

**Suggested comment from Cathy Tullis for Headquarters NA****Included comments:**

SME [anna.valdez@nnsa.doe.gov](mailto:anna.valdez@nnsa.doe.gov)

Under (9), suggest changing to read:

Approve performance based pay adjustments and performance awards.

**Response:**  
*Reject*

Retain current language used in the ERB Charter.

**Suggested comment from Cathy Tullis for Headquarters NA****Included comments:**

SME [lynn.brownell@nnsa.doe.gov](mailto:lynn.brownell@nnsa.doe.gov)  
d. remove the extra "Resources" from section header

**Response:**  
*Accept*

**Suggested comment from Steve Duarte for Headquarters GC**

**Included comments:**

**SME kate.gehringer@hq.doe.gov**

in (2) should we include EK as well? Are there any EK-301s?

**Response:**

*Reject*

The concurrence by GC is applicable to the EJ authority only, and specifically to address the issue that an appointment can be made to an administrative type position. The EK authority clearly states scientific, engineering, and technical positions.

**Suggested comment from Cathy Tullis for Headquarters NA**

**Included comments:**

**SME anna.valdez@nnsa.doe.gov**

f.(2) Change to: Concur in use of selection without competition of personnel classified under GS-301-series equivalent utilizing the EJ authority.

**Response:**

*Accept*

**6. REFERENCES**

**Suggested comment from Cathy Tullis for Headquarters NA**

**Included comments:**

**SME anna.valdez@nnsa.doe.gov**

Suggest adding date of document to the reference:

c. Executive Resources Board Charter

**Response:**

*Accept*

**SME anna.valdez@nnsa.doe.gov**

d. This document does not discuss telework; therefore this reference should not be listed. (The document does refer to ALL benefits, however no need to list every reference for every benefit).

**Response:**

*Accept*

**ATTACHMENT 1. SETTING PAY**

**Major comment from Steve Duarte for Headquarters GC**

**Included comments:**

**SME kate.gehringer@hq.doe.gov**

Global Comment for all of Attachment 1 -- the attachment uses "basic pay" where it should probably use "base pay". "Basic pay" includes base pay plus locality. Verify which term you intend to use on this attachment.

**Response:**

*Accept*

**Example A**

**Example B**